National Advisory Council

Recommendations on Pre-Legislative Process

The need for a Pre-Legislative Consultative Policy

The opening words of the Preamble of the Constitution of India, *"We, the people of India..."* and the closing words *"…do here by adopt, enact and give to ourselves this constitution"*, signifies the democratic principle that, power ultimately, rests in the hands of the people.

The concept of popular sovereignty is one of the basic structures of the Constitution of India. Hence people have the right to participate in all decisions on all matters. This draft pre-legislative policy draws its mandate first from the Constitution and seeks to move in the direction of creating institutionalized space for people's participation in the formulation of legislations in a systematic manner.

The need for such a policy of consultation is necessary, to evolve from a representative democracy to a participatory, deliberative democracy; particularly for accountability to the people in the formulation of law and policy. However, it is not an attempt to replace the legislative Parliamentary process. There is in fact recognition that both processes have fundamental strengths, and complementary trajectories; where one process cannot replace the other. The pre-legislative process therefore aims to democratize the process of law making in the country by strengthening the involvement of the citizen in the process of drafting and enacting legislation, without undermining the role of the Executive or the Legislature.

In India, the only opportunity that citizens have to present their views on legislations in the making is either through the Members of Parliament or if they are called to the Parliamentary Standing Committees.

The Recommendation of the National Commission to Review the Working of the Constitution in 2002, stated that "*For a more systematic approach to the planning of legislation, the following steps should be taken:-*

> *(a) Adequate time for consideration of Bills in committees and on the floor of the Houses as also to subject the drafts to thorough and rigorous examination by experts and laymen alike should be provided.*
> *(b) All major social and economic legislation should be circulated for public discussion to professional bodies, business organisations, trade unions, academics and other interested persons."*

It was therefore felt necessary to institute procedures which will allow people to scrutinize, respond to and influence, draft legislation before the formal legislative process begins. Strengthening any draft legislation before sending the Bill through the Parliamentary process will naturally strengthen the Parliamentary process itself and eventually results in more

robust legislation that will also be more effectively implemented because of people's involvement at every stage.

The Scope of the Pre-Legislative Process

The scope of the Pre Legislative process in respect of Central Government will extend to:

- New laws and amendments to laws
- New Rules and amendments to rules

Locating the Pre-Legislative Process

An executive order to be issued requiring all Central Ministries to follow the pre-legislative process.

Main Principles of a Pre – Legislative Process

The pre-legislative process should be based on three main principles:

1. Transparency: The Right to Information Act, 2005 (RTI) provides a statutory mandate for transparency of all information held by the State subject to limited and predefined exclusions.

2. Inclusiveness: The ideal of democracy mandates processes of universal inclusion either directly or through representation. The pre-legislative process must balance both inclusiveness and practicality for meaningful citizen participation.

3. Equity: Special efforts must be made to solicit and incorporate views of those groups/persons directly affected by decisions and the public at large.

Major stages of the pre legislative process

Proactive Disclosure

The following is the desired approach to the pro-active disclosure. The detailed modalities of proactive disclosure however, may be left to the Central Ministry concerned.

The Public Authority of the Central Ministry concerned shall publish a Statement of Objects and Reasons, on the basis of which it will draft legislation. The Statement will also be published in the concerned regional languages, by respective State Governments, in addition to being available in English and Hindi. The Statement shall be kept in public domain for 45 days and proactively shared with the public, as may be prescribed by the Central Ministry concerned. The Statement shall comprise, at least the following components:

a. A Statement of Objects and Reasons justifying the need for the concerned legislation
b. Essential Elements of the proposed legislation
c. Broad Financial Implications of the proposed legislation
d. Estimated Impact of the legislation on the environment, fundamental rights, and the lives and livelihoods of the concerned/affected people.

The Public Authority will then publish the draft legislation or rules and keep it in public domain for 90 days and proactively share with the public. Where the legislation affects a specific group of people, the document may be disclosed through means such as, notice/pamphlets/posters in every Panchayat, School, Post Office, Rajiv Gandhi Sahayta Kendra in the area consisting of affected people and notices to households. Every draft law or rule placed for consideration in the pre-legislative process shall be accompanied by an explanatory note which explains the key legal provisions in common language.

The Statement of Objects and Reasons and the Draft Legislation, shall be made available in all its administrative units.

The drafts in both the phases are to be accompanied by a set of questions and standard format on which feedback is solicited from public. Summary of the feedback/comments received from public to be hosted in the public domain.

Consultations

The Public Authority concerned shall hold consultations with stakeholders. In principle, all citizens of India are stakeholders. However, the degree of participation and mode of consultations may be decided by the Central Ministry concerned and will vary according to nature of subject and the potential impact on those who will be affected by the legislation.

Redress Mechanism for non-compliance

Each Department / Ministry will appoint a nodal officer to whom complaints of non-compliance with executive orders can be addressed. This will be an internal redress mechanism. Further, the Department of Law will be the nodal authority for ensuring the efficient roll out and compliance of the PLP.

Feedback

The concerned Public Authority shall ensure that a copy of the summary of the feedback received from stakeholders (including government departments and public) and response of the nodal Department/Ministry is submitted to the Cabinet with the Draft Legislation, amendment to legislation. The format of this feedback may be prescribed by the Central Ministry concerned. The proceedings and summary of the PLP shall be placed before the Departmental Standing Committee of Parliament by the Department concerned, at the time that the proposed legislation is brought to Parliament.